

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JEFFREY DESKOVIC,

Plaintiff,

vs.

CITY OF PEEKSKILL, PUTNAM COUNTY,
WESTCHESTER COUNTY, DAVID LEVINE,
THOMAS MCINTYRE, WALTER BROVARSKI,
EUGENE TUMOLO, JOHN AND JANE DOE
SUPERVISORS, DANIEL STEPHENS, LOUIS
ROH, MILLARD HYLAND, PETER INSERO, and
LEGAL AID SOCIETY OF WESTCHESTER
COUNTY,

Defendants.

LINDA MCGARR,

Plaintiff,

vs.

CITY OF PEEKSKILL, WESTCHESTER
COUNTY, DAVID LEVINE, THOMAS
MCINTYRE, WALTER BROVARSKI, EUGENE
TUMOLO, JOHN AND JANE DOE
SUPERVISORS, DANIEL STEPHENS, LOUIS
ROH, AND MILLARD HYLAND,

Defendants.

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Index No. CV-07-8150 (KMK)(GAY)

**STIPULATION AND ORDER OF
DISMISSAL WITHOUT PREJUDICE
AS TO
WESTPORT INSURANCE CORPORATION
as successor-in-interest to
NORTH RIVER INSURANCE COMPANY
and
WESTPORT INSURANCE CORPORATION
as a successor-in-interest to
INTERNATIONAL INSURANCE COMPANY
REGARDING
PEEKSKILL'S THIRD-PARTY ACTION
IN THE MCGARR ACTION**

Index No. CV-07-9488 (KMK)(GAY)

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DOC #: _____
DATE FILED: _____

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CITY OF PEEKSKILL,

Third-Party Plaintiff,

vs.

WESTPORT INSURANCE CORPORATION as successor-in-interest to NORTH RIVER INSURANCE COMPANY, WESTPORT INSURANCE CORPORATION as a successor-in-interest to INTERNATIONAL INSURANCE COMPANY, UNDERWRITERS AT LLOYD'S, LONDON, CX REINSURANCE COMPANY LIMITED as successor-in-interest to CNA INTERNATIONAL REINSURANCE COMPANY, CX REINSURANCE COMPANY LIMITED as successor-in-interest to CNA REINSURANCE OF LONDON, LIMITED, SPHERE DRAKE INSURANCE PLC, ILLINOIS UNION INSURANCE COMPANY, UNITED NATIONAL INSURANCE COMPANY, TRAVELERS INDEMNITY COMPANY as successor-in-interest to GULF INSURANCE COMPANY, AMERICAN MOTORISTS INSURANCE COMPANY as successor-in-interest to AMERICAN PROTECTION INSURANCE COMPANY, AMERICAN MOTORISTS INSURANCE COMPANY as successor-in-interest to SPECIALTY NATIONAL INSURANCE COMPANY, HARCO NATIONAL INSURANCE COMPANY, and AMERICAN ZURICH INSURANCE COMPANY

Third-Party Defendants.

WHEREAS, Third-Party Plaintiff City of Peekskill (“Plaintiff” or “Peekskill”) has asserted claims against Third Party Defendant Westport Insurance Corporation as successor-in-interest to North River Insurance Company and Westport Insurance Corporation as a successor-in-interest to International Insurance Company (“Westport”) in the above-captioned Third-Party Actions filed in both *Deskovic v. City of Peekskill, et al.*, No. 07-CV-8150 (the “*Deskovic* Action”) and *McGarr v. City of Peekskill, et al.*, No. 07-CV-9488 (the “*McGarr* Action”).

WHEREAS, the undersigned parties hereby give notice that the above-captioned Third-Party Actions filed in both the *Deskovic* and *McGarr* Actions have been settled pursuant to a settlement agreement between the undersigned parties.

WHEREAS, the undersigned parties hereby give notice that pursuant to the terms of the settlement between the undersigned parties, the above-captioned Third-Party Action filed in the *McGarr* Action is voluntarily dismissed, without prejudice, against Westport until the *McGarr* Action’s conclusion or until Westport ceases to defend Peekskill in the *McGarr* Action up to the remaining limits of the 1990 North River Policy.¹

WHEREAS, the above-captioned Third-Party Action filed in the *Deskovic* Action has or will be dismissed with prejudice by separate stipulation against Westport.

WHEREAS, the above-captioned Third-Party Actions filed in both the *Deskovic* and *McGarr* Actions filed against the remaining Third-Party Defendants have or will be dismissed with or without prejudice by separate stipulations so that the Third-Party Actions filed in both the *Deskovic* and *McGarr* Actions will each be dismissed in their entirety.

WHEREAS, Peekskill and Westport seek to reduce the expense and burden of litigation to themselves, to the other parties in this action, and to the Court.

NOW, THEREFORE, in consideration of this Stipulation of Dismissal without Prejudice, Peekskill and Westport, by and through their respective counsel of record, hereby mutually agree to the following:

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties that pursuant to Federal Rule of Civil Procedure 41 and court order all claims in the above-captioned Third-Party action filed in the *McGarr* Action are dismissed without prejudice as against Westport until the *McGarr* Action’s conclusion or until Westport ceases to defend Peekskill in the *McGarr* Action up to the remaining limits of the 1990 North River Policy.

IT IS FURTHER STIPULATED AND AGREED, that each undersigned party shall bear its own costs and attorneys’ fees.

¹ North River Insurance Company Policy No. FTZ 51144 for the Policy Period 12/31/1989 – 12/31/1990.

IT IS FURTHER STIPULATED AND AGREED, that this Stipulation may be signed in counterparts with all counterparts together constituting one complete Stipulation and that signatures received by facsimile or e-mail shall be deemed an original for purposes of this Stipulation.

[signatures pages to follow]

Dated: January 21, 2014

LEWIS BRISBOIS BISGAARD
& SMITH LLP

By:

Janey L. Mack

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**ATTORNEYS FOR THIRD-PARTY DEFENDANTS
WESTPORT INSURANCE CORPORATION AS
SUCCESSOR-IN-INTEREST TO NORTH RIVER
INSURANCE COMPANY; NORTH RIVER
INSURANCE COMPANY; AND
WESTPORT INSURANCE CORPORATION AS
SUCCESSOR-IN-INTEREST TO INTERNATIONAL
INSURANCE COMPANY**

Dated: January 21, 2014

ANDERSON KILL P.C.

Steven J. Pudell/MV

By:

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**ATTORNEYS FOR THIRD-PARTY
PLAINTIFF CITY OF PEEKSKILL**

SO ORDERED this 24th day of January,
2014.

KM
The Honorable Kenneth M. Karas
United States District Judge